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Office Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, et al.,

Appellants

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, et al.,

Appellees

On Appeal from the United States District Court for the Middle District of Florida

APPENDICES TO JURISDICTIONAL STATEMENT

VOLUME II

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APPENDIX E

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

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INTERSTATE COMMERCE COMMISSION

Served August 24, 1962

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice to that effect, signed by the Secretary, has been served.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

Decided

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1. Motions to dismiss the application herein, denied.
2. (a) Merger of the properties and franchises;
(b) acquisition of sole or joint control of carriers subsidiary to or affiliated with, and trackage rights over and joint use of lines of other railroads;and
(c) transfer of the motor carrier operating rights of Atlantic Coast Line Railroad Company into the Seaboard Air Line Railroad Company (name to be changed to Seaboard

Coast Line Railroad Company), through acquisition of capital stock, and ownership, management, and operation pursuant to the plan of merger herein; and, by virtue of such merger, acquisition of control of Seaboard Air Line Railroad Company, the surviving corporation, by Atlantic Coast Line Company, a holding company, approved and authorized. Conditions prescribed.

3. Supplemental application of Mercantile-Safe Deposit and Trust Company, to acquire indirect control of Seaboard Coast Line Railroad Company and its common carrier subsidiaries and affiliates, by virtue of ownership of capital stock of Atlantic Coast Line Company, dismissed.

[2]

4. Authority granted to Seaboard Air Line Railroad Company to issue 3,839,345 shares of $20 par value common stock pursuant to the aforesaid plan of merger, and as of the date of such merger, to assume obligations and liabilities of the Atlantic Coast Line Railroad Company, and the companies subsidiary to or affiliated therewith, which are contingently guaranteed, either solely or with other guarantors, by Atlantic Coast Line Railroad Company. Conditions prescribed.

Harold J. Gallagher, Walter H. Brown, Jr., Charles T. Abeles, Richard A. Hollander, Edward W. Bourne, Prime F. Osborn, R. B. Gwathmey, Phil C. Beverly, Ned A. Beeker, John W. Weldon, and *Edwin H. Burgess* for applicants.

Walter R. McDonald, David O. Benson, A. V. Conlin, William F. Black, Norwood Johnson, and *James L. Graham, Jr.,* for regulatory agencies of the States of Georgia, Alabama, and Florida.

John D. Lane, Fred S. Gilbert, Jr., Page Haddock, T. C. Maurer, Walter C. Scott, Jr., John B. Miller, Reuben G. Grimm, Henry L. Walker, William D. McLean, Jack R. Turney, Jr., D. W. Markham, R. Allan Wimbish, Arthur J. Winder, E. B. Ussery, C. J. Collins, John W. Adams, Jr., E. B. DeVilliers, J. H. Wright, Howard D. Koontz, William H. Towle, James H. Dur-

kin, Joseph B. Cumming, Henry P. Eve, John C. Ashton, James L. Homire, Ralph L. McAfee, Thomas D. Barr, Laurance M. Hyde, Jr., W. L. Grubbs, J. W. Hoeland, C. H. Edwards, Clifford T. Coomes, and *Robert B. Claytor* for railway interveners in opposition, or, as their interests may appear.

Arthur H. Brown, J. D. Patterson, C. A. Johnpeter, J. L. Tompkins, C. H. Vescelius, Paul C. Sarrett, Bates B. Bowers, Fred H. Kent, J. Henry Blount, Horace Perry, Edwin Maner, Jr., A. Pratt Adams, Jr., Joseph Minotti, John H. Dewell, Robert L. Trohn, T. Hoyt Carlton, Halley B. Lewis, John W. Sognier, Malcolm Bell, Jr., M. H. McGowan, Fred R. Brannon, Jr., and *Dean Tooker,* for various shippers and receivers, and counties, municipalities, civic, and other organizations.

William G. Mahoney, Joseph A. Robie, James L. Highsaw, ford T. Croomes, and *Robert B. Clayton* for railway interveners organizations.

Henry J. Decker and *T. D. Geoghegan,* minority stockholders, for themselves.

E. Winslow Turner, Colin A. Smith, and *Maurice A. Fitzgerald* for the United States Department of Justice, Antitrust Division.

Clement T. Mayo for the United States Department of Defense.

REPORT AND ORDER

RECOMMENDED BY HYMAN J. BLOND, HEARING EXAMINER

The Seaboard Air Line Railroad Company (Seaboard),[1] the Atlantic Coast Line Railroad Company (Coast Line), common

[1]The names of applicants and interveners will be referred to by the distinguishing portion of their corporate names, or, by the abbreviations shown in parenthesis following their respective names.

carriers by railroad subject to part I of the Interstate Commerce Act, and The Atlantic Coast Line Company (ACL company), a non-carrier holding company subject to provisions of the act in respect of reports, accounting, and securities of carriers, on July 22, 1960 filed a joint application for authority under section 5(2) of the act, (a) to merge the properties and franchises of the Coast Line into Seaboard, which as the surviving corporation would change its name to Seaboard Coast Line Railroad Company (the merged company), and (b) for Seaboard to acquire sole or joint control of carriers subsidiary to or affiliated with Coast Line, through ownership of stock or lease including trackage rights over or joint use of railroad lines of certain carriers,[2] and, approval and authority under section 20a, in accord with the terms of the plan of merger executed by the applicants, for the merged company to issue its common stock, par value $20 per share, and to assume and be responsible for the liabilities and obligations of Coast Line.

By a supplemental application filed August 9, 1960, Mercantile-Safe Deposit and Trust Company (Mercantile), a non-carrier not subject to the act, joined as party applicant herein, contingent upon approval, authorization, and consummation of the foregoing proposed transactions. Matters pertaining to the interests of Mercantile and the relief sought in its application will be discussed hereinafter under an appropriate separate heading.

Several hundred resolutions, protests, and letters of objection to the proposals of the applicants were received, and the application and supplemental application were assigned for hearing and recommendation of an appropriate order accompanied by the reasons therefor. Pursuant to petitions filed prior to and during the course of the hearing, some 85 parties were

[2] As clarified at hearing, refers also to the outstanding motor carrier operating rights issued to Coast Line under part II of the act, Docket No. 23942 and sub numbers thereto.

permitted to intervene in support, in opposition, or, as the interests of the petitioners might appear. Many who were permitted to intervene failed to enter appearances at the hearing through counsel or otherwise. The interventions of such persons should be considered only as expressions in the nature of correspondence accompanying the record.

Public hearings opened November 28, 1960 and closed July 28, 1961, and 9 separate sessions were held on 35 days during that period. Sessions up to several days each were held at Richmond, Va., Tampa, Fla., Savannah, Ga., Montgomery, Ala., Atlanta, Ga., Miami, Fla., and Washington, D. C.

At the close of the hearing the examiner announced he would not request the filing of briefs. On August 15, 1961, 10 intervener railroads filed a stipulation agreeing not to file briefs to the hearing examiner, and the applicants agreed

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to restrict their brief to specified topics that might be covered by interveners not party to the stipulation. The agreement reserves to each party thereto the right to renew and argue any exception or position of record at a suitable time subsequent to the service of the examiner's report and recommended order. Briefs were filed by the applicants on limited issues, and on behalf of Florida East Coast Railway Company, Apalachicola Northern Railroad Company and St. Joe Paper Company, an owner of Coast Line stock, an owner of Seaboard stock, Railway Labor Executives' Association, and the United States Department of Justice.

THE APPLICANTS

Railroad operations and properties. The principal lines of railroad of Seaboard extend from its northernmost terminals at Richmond and Portsmouth, Va., southerly to Jacksonville,

Tampa, St. Petersburg, Miami and Homestead, Fla. Other lines from Atlantic Coast and other eastern points extend in a westerly direction from Wilmington to Rutherfordton, N. C.; from Monroe, N. C., to Atlanta, Ga., and Birmingham, Ala., from Savannah, Ga., to Montgomery, Ala., with a branch to Macon, Ga.; and from Jacksonville to Chattahoochee (River Junction), Fla. From Tallahassee, Fla., a line extends in a northerly direction to Richland and Columbus, Ga. Seaboard's principal points of interchange with other railroads are Richmond, Portsmouth, and Petersburg, Va., Charlotte, Bostic, Durham, and Pinoca, N. C., Greenwood, S. C., Howells (Atlanta), Savannah, Athens, Columbus, Macon, Vidalia, and Kingsland, Ga., Birmingham and Montgomery, Ala., and Jacksonville, Tampa, and Chattahoochee, Fla. Terminal facilities are owned at the ports of Portsmouth, Wilmington, Charleston, S. C., Savannah, and Jacksonville, Tampa, and Boca Grande, Fla.

The principal lines operated by Coast Line extend from its northernmost points at Richmond and Pinners Point, Va., in generally southerly and westerly directions to Wilmington, Spartanburg, S. C., Atlanta and Albany, Ga., Birmingham and Montgomery, and Jacksonville, St. Petersburg, and Tampa, Fla., with various intermediate branch lines and a network of connecting lines within the central and western areas of Florida. Coast Line's principal points of interchange are Richmond, Pinners Point, and Petersburg, Selma, Goldsboro, Fayetteville and Wadesboro, N. C., Columbia and Spartanburg, S. C., Augusta, Savannah, Albany, Atlanta, Oglethorpe and Tifton, Ga., Birmingham and Montgomery, and Jacksonville and Chattahoochee. Coast Line owns terminal facilities at the ports of Norfolk, Va., Charleston, Wilmington, Savannah and Brunswick, Ga., and Jacksonville. A wholly owned subsidiary, the Atlantic Land and Improvement Company, owns terminal facilities at Port Tampa, Fla., including a modern elevator for loading phosphate into ships.

Seaboard and Coast Line each operate through freight trains in conjunction with the lines and services of practically every

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railroad reaching the areas and points served by the applicants. Traffic which originates at or is delivered to Washington, D. C., and points north and east of that gateway moves beyond Richmond over the line of the Richmond, Fredericksburg and Potomac Railroad Company (Potomac company), which is controlled through stock ownership by a separate corporation, the stock of which is jointly owned by the using railroads. Seaboard and Coast Line each own a one-sixth interest in the Potomac company. They each operate through passenger trains between points in Florida on the one hand, and, on the other, the major eastern cities including New York, Philadelphia and Washington, in connection with the Potomac company and the Pennsylvania Railroad. Coast Line serves points on the east coast of Florida via its connection at Jacksonville with the Florida East Coast Railway Company (East Coast).

The applicant railroads each have varying proportionate ownership of capital stock of other carriers by railroad, and terminal and other railroad service companies. Appendix "A," attached hereto, lists the names of such related companies, and the percentage of their stocks owned by Seaboard and Coast Line, respectively, as of March 31, 1960. Seaboard wholly owns and operates as a separate subsidiary railroad, the Tavares and Gulf Railroad Company, between Tavares and Winter Garden, Fla., 38 miles. Coast Line operates several wholly owned subsidiaries as separate carriers.[3] These include the

[3]The Charleston & Western Carolina Railway Company (Western Carolina), between Spartanburg, S. C., and Augusta, Ga., about 342 miles, which theretofore had been operated as a separate company, merged into Coast Line, December 31, 1959, pursuant to **Atlantic Coast Line R. Co.—Merger—Charleston & W. C. Ry. Co.**, 307 I.C.C. 614.

East Carolina Railway, between Farmville and Tarboro, N. C., 29 miles; the Rockingham Railroad Company between Rockingham and Gibson, N. C., 20 miles; and the Virginia and Carolina Southern Railroad Company between St. Paul and Lumberton, N. C., 27 miles. Also operated by Coast Line as jointly owned subsidiaries are the Columbia, Newberry & Laurens Railroad Company, 75 miles, the capital stock of which is owned 80 percent by Coast Line and 16.67 percent by Seaboard; and the Winston-Salem Southbound Railway Company, 98 miles, the stock of which is owned 50 percent each by Coast Line and the Norfolk & Western Railway Company.

Coast Line controls the Louisville & Nashville Railroad Company (L-and-N) through ownership of 33.69 percent of its capital stock as of May 15, 1960. That control has continued since 1902, when Coast Line acquired 51 percent of the then outstanding stock. L-and-N's lines (about 5,696 miles) and those of Coast Line connect physically at Birmingham, Bessemer, Montgomery, and Talladega, Ala., Atlanta, Ga., and Chattahoochee, Fla.

[6]

By virtue of a lease initially executed in 1899, Coast Line and L-and-N jointly control and operate the Georgia Railroad which extends from Atlanta to Augusta with branches to Macon, Washington, and Athens, Ga., approximately 321 miles. Pursuant to authorization dated June 3, 1924 in *Clinchfield Railway Lease,* 90 I.C.C. 113, Coast Line and L-and-N are joint lessees of the Carolina, Clinchfield and Ohio Railway (Clinchfield) for a term of 999 years. Clinchfield's lines extend from Elkhorn City, Ky., to Spartanburg, S. C., 292.93 miles. Also corporately related to Coast Line are the Atlanta and West Point Rail Road Company, the lines of which extend from Atlanta to West Point, Ga.; and the Western Railway of Alabama, extending beyond West Point to Montgomery and Selma, Ala., about 225 miles.

The applicants have facilities and provide service at 121 common points, and they actively compete for traffic to and from such points. At 64 of the points commonly served are facilities for physical interchange of traffic between the lines of Seaboard and Coast Line. By states, 24 of the latter points are located in Florida, 15 in South Carolina, 11 in North Carolina, 6 in Georgia, 5 in Virginia, and 3 in Alabama. In addition to the points where Seaboard and Coast Line both provide service, Seaboard serves 92 points which also are served by railroads other than Coast Line, and Coast Line serves 51 points served by railroads other than Seaboard.

The lines operated by Seaboard at the end of 1959 totaled 4,146.62 miles, of which 3,855.97 were owned by Seaboard, 258.12 miles were leased from other railroads (all but 59.51 miles being the property of wholly owned subsidiaries), and 32.53 miles operated under trackage rights. The lines operated by Coast Line at the end of 1959 totaled 5,573.07 miles, of which 5,406.27 miles were owned by Coast Line (93.57 miles being those of proprietary companies), 50.78 miles were leased, and 22.45 miles operated under trackage rights. Adjusting the above mileages to reflect changes due to retirements and reclassification of portions of the lines, and the elimination of 1,012.85 miles of line which would be the subject of abandonment applications following consummation of the merger, the merged company would operate 9,809 miles of line, of which 5,637 miles would be Coast Line's present trackage, and 4,172 miles would be that of Seaboard. Of the trackage retained approximately 36 percent of Seaboard's mileage and 33 percent of Coast Line's would be situated in Florida, and in the other states involved, the relative ratios between the companies would be (Seaboard ratios first): Georgia 22, 20 percent, South Carolina 18, 19 percent, North Carolina 15, 19 percent, Alabama 5, 6 percent, and Virginia 4, 3 percent.

As of December 31, 1959, Seaboard's rolling equipment included 430 road diesel units, 96 yard switching diesel units, 28,389 freight train cars, and 455 passenger train cars.

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Coast Line's equipment included 474 road and 123 yard diesel units, 29,857 freight train cars (including 2,776 leased cars), and 562 passenger train cars. These totals do not include equipment of separately operated affiliated companies.

Traffic handled. Coast Line and Seaboard both serve the major industrial and agricultural centers within the states where they operate. The number of tons of the commodities most predominant among those handled by the applicants, (1,000,000 tons or more) the revenues thereon, and the average revenue per ton, during 1959, for each applicant are as follows:

SEABOARD AIR LINE

Commodity	*Tons*	*Revenue*	*Revenue Per Ton*
Phosphate rock	10,263,059	$15,162,699	$1.48
Stone & rock: broken, ground and crushed	8,190,094	7,733,208	.94
Pulpwood	5,965,762	8,068,231	1.35
Bituminous coal	4,674,166	6,667,886	1.43
Gravel and sand	3,935,940	3,864,571	.98
Fertilizers, NOS	1,915,575	6,151,030	3.21
Cement: Natural and Portland	1,600,038	3,282,974	2.05
Paperboard, fiberboard and pulpboard	1,519,470	8,017,523	5.28
Clay and bentonite	1,169,687	4,027,164	3.44
Total principal commodities	39,233,791	$62,975,286	$1.60

All other carload commodities	12,445,154	72,493,492	5.83
Less than carload traffic	88,759	2,671,060	30.09

ATLANTIC COAST LINE

Phosphate rock	9,966,131	$12,246,782	$1.23
Stone & rock: broken, ground and crushed	6,172,442	5,578,512	.90
Pulpwood	5,628,483	7,921,700	1.41
Gravel and sand	5,505,188	5,578,666	1.01
Bituminous coal	3,372,214	6,013,360	1.78
Fertilizers, NOS	2,752,255	9,011,227	3.27
Cement: Natural and Portland	1,363,630	3,456,840	2.54
Products of agriculture, NOS	1,103,275	599,714	.54
Paperboard, fiberboard, and pulpboard	1,037,640	5,216,717	5.03
Total principal commodities	36,901,258	$55,623,518	$1.51
All other carload commodities	13,753,064	72,740,844	5.29
Less than carload traffic	123,034	3,389,392	27.55

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Transportation of passengers, mail, express and allied traffic during 1959 accounted for 13.7 percent of Coast Line's total operating revenues, and 13.4 percent of Seaboard's.

Valuation—railroad properties. All the railroad properties of Seaboard and Coast Line are involved in the proposed merger. In the tabulation immediately following, are shown the recorded valuations of the properties of each as determined by the Commission for rate-making purposes as of June 30, 1918 for Seaboard, and June 30, 1917 for Coast Line. Also shown are valuations as of June 30, 1915 pertaining to the properties

of the Western Carolina referred to in footnote, *supra*. Generally, the totals reflect appropriate adjustments heretofore necessary to give effect to various acquisitions and other changes which, from time to time, were combined to form the present Seaboard and Coast Line systems. Separately shown is the net cost of additions and betterments to the properties of each since the date of valuations found by the Commission to March 31, 1960.

	Seaboard°	*Coast Line*†	*C&WC Ry*‡
Carrier property (except lands — Reproduction cost — New	$125,658,791	$163,790,642	$ 9,822,675
Carrier lands and rights	19,526,137	24,154,501	1,872,895
Non-carrier property land and improvements	2,959,658	4,295,806	222,358
Total owned property including land & rights as of valuation dates	148,144,586	192,240,949	11,917,928
Road and equipment	191,047,796	183,328,390	8,297,333
Net increase in property additions and betterments valuation dates to March 31, 1960	407,378,746	367,605,979	(Note 1.)

°Valuation date — June 30, 1918 — 35 Val. Rep. 337 (394).
†Valuation date — June 30, 1917 — 38 Val. Rep. 503 (584).
‡Valuation date — June 30, 1915 — 121 I.C.C. 721 (749).
(Note 1). — Western Carolina net additions and betterments embraced in total shown for Coast Line.

Corporate status. Seaboard was incorporated in Virginia in 1944 to acquire and operate the properties of a predecessor

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corporation and its subsidiaries upon emergence from receivership. *Seaboard Air Line Ry. Co. Receivership,* 261 I.C.C. 689, decided June 28, 1946. With its predecessors, Seaboard has engaged in railroad transportation for more than 100 years. It is not controlled by any other corporation or corporations.

Coast Line's principal predecessor was incorporated in Virginia in 1836 under another name. The present corporation has resulted from mergers and consolidations with various railroad corporations initially organized in other states, but Coast Line retains domestic status only in Virginia. It is controlled by the ACL company through ownership of a substantial portion of capital stock.

The ACL company was organized in Connecticut in 1889 under another name. It has engaged in the investment business continuously since its incorporation. In 1929, its charter was amended specifically excluding any power to engage in railroad transportation. In Finance Docket No. 15015, *Atlantic Coast Line R. Co. Purchase,* 261 I.C.C. 820, not printed in full, decided December 22, 1945, the Commission found that the ACL company had control of the Coast Line within the meaning of the act, and should be considered as a carrier subject to certain provisions of the act relating to required accounting and filing of reports.

There are no intercorporate relationships between Seaboard and Coast Line. They have no officers or directors in common. Several officers and directors of each also serve in similar capacities with respect to various affiliated companies commonly owned by Seaboard and Coast Line. Within the related Coast Line corporations herein, several directors and officers serve more than 1 company. Of the members of the board of the ACL company, 5 individuals also are directors of Coast Line.

Except that the assistant secretary of the ACL company also serves as secretary of Coast Line, there are no officers in common.

Capital Stock. Seaboard presently is authorized to issue 500,000 shares of preferred stock of $100 par value per share, none of which has been issued, and 10,000,000 shares of common stock of $20 par value. Coast Line is authorized to issue 150,000 shares of preferred stock of $100 par value, 1,554 shares of which are designated as "Original Preferred Stock," and the remainder as "Series Preferred Stock," and 4,000,000 shares of common stock of no par value. None of the Series Preferred Stock has been issued. Except that 1,212 shares of common stock of Seaboard, represented by unexchanged certificates, have no voting power, each share of stock of the respective applicants is entitled to 1 vote. The number of shares of capital stock of each class issued and outstanding as of the date shown, the respective par value per share, and the number of stockholders of record of each applicant, are as follows:

[10]

Applicant	Class	Outstanding	Par Value	Date	Stockholders
Seaboard	Common	4,837,192 (*)	$20	6-17-60	16,935
Coast Line	Common	2,632,806 (†)	No par	5- 4-60	5,623
Coast Line	pref'd	1,554	$100.	5- 4-60	
ACL Company		705,600	No par	5- 4-60	1,373
Mercantile		272,500	$20.	6-17-69	2,976

*Includes 63,541 shares previously issued and reacquired and held in the treasury reserved for purposes of Seaboard's Restricted Stock Option Plan, approved by the stockholders in December 1952.

†Includes 68,650 shares previously nominally issued and reserved for issuance pursuant to Coast Line's Restricted Option Plan, approved by the stockholders in April 1958.

Ownership by the applicants of the capital stock of other of the applicants and related carriers, shown as of May 15, 1960, includes the following: Coast Line beneficially owns 823,427 shares or 33.69 percent of the outstanding capital stock of the L-and-N; ACL company beneficially owns 933,200 shares or 35.46 percent of the common stock of Coast Line and 922 shares of its original preferred stock.

Financial statements. Attached hereto as Appendix "B" is a tabulation showing in separate columns the general balance sheet statements of August 31, 1960, for (1) Seaboard, (2) Coast Line, (3) Seaboard and Coast Line combined, (4) accounting adjustments to give effect to the acquisition of Coast Line, and (5) the adjusted and combined pro-forma general balance sheet of the merged company. The pro-forma statement represents the combining of the asset and liability accounts of the merging applicants, and a recomputation of the shareholders' equity accounts on the basis of the merger being authorized and consummated as proposed. The equity of the shareholders of the merged company is computed to eliminate the value of Coast Line's present preferred and common stock issues and substitute the par value of the capital stock which would be issued in exchange for Coast Line's present shares. The excess of the stated value of Coast Line's shares over the par value of the merged company's shares is added to the merged company's capital surplus account. The accounting shown in the pro-forma balance sheet column is not to be construed as recommended for approval at this time, but, will be subject to consideration upon submission of statements showing all expenditures and the accounting entries proposed to record the merger and related transactions, as required by the order herein.

[11]

The contingent liabilities of Seaboard and Coast Line arise primarily under obligations of each as guarantors jointly and